

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

BKY. NO. 04-30934

SCOTT JOSEPH HANK AND
BONNIE MARIE HANK,

RESPONSE

DEBTOR(S).

TO: U.S. Trustee, Paul W. Bucher, Chapter 7 trustee, and all parties in interest entitled to notice under Bankruptcy Rules 2002, 9010 and Local Rule 2002-1.

1. Debtors, by and through their undersigned attorney of record and pursuant to Local Rule 9013-2(b), interpose this Response in opposition to the Notice of Motion and Motion Objecting to Claimed Exemptions tendered to the Court by the Chapter 7 trustee. Hearing on this matter is set for Wednesday, July 7, 2004 at 10:00 a.m. before the Hon. Dennis D. O'Brien, Judge of Bankruptcy Court in Courtroom 228A, United States Courthouse, 316 North Robert Street, Saint Paul, MN 55101.
2. This Chapter 7 case was commenced on February 19, 2004. The debtors' 11 U.S.C. § 341 First Meeting of Creditors was held on April 14, 2004.
3. The trustee's objection pertains to the debtors' exemption claims as to the following assets: 1997 Ford F150 XLT, 2001 Crestliner 17 ft boat and EZ loader trailer (described as NONE on debtors' Schedule "C"), 2001 Dodge Grand Caravan SE, cash, First Farmers & Merchants National Bank savings #430692, First Farmers & Merchants National Bank checking #135853 and wages owed as of the date of the bankruptcy filing. Said objection appertains to the debtors' available exemption allowances under 11 U.S.C. § 522(d)(5). The trustee contends that he has insufficient information to determine the values of the foregoing items so as to make an appropriate determination as to whether or not debtor Scott Hank exceeds his available (d)(5) exemption limitations.
4. The debtors submit that they may or may not be in excess of their allowable exemption limitations. In any event, if they are in excess of their allowable exemption limitations, they reserve the right to amend their schedules accordingly. Given the language of the trustee's objection, the debtors would be denied any exemption to any of the foregoing items via *res judicata and collateral estoppel* were the Court to sustain the same (*In re Hewitt*, Bky. No. 97-33854 – Order Sustaining Trustee's Objection to Exemptions). The debtors, therefore, interpose this Response for purposes of preserving their rights to amend their schedules and for purposes of laying an exemption claim to the various items of property within, and not in excess of, their available exemption allowances.

5. The debtors further assert that any excess would not be as large as the trustee may believe. Given the debtors' present (d)(1)/(d)(5) allowances of \$9,650.00 each and assuming that the 2001 Crestliner boat is only in the name of Scott Hank, the debtors believe that Scott Hank is in excess of his available exemption limitations by roughly \$815.49. The debtors contend that the issue is not whether Scott Hank exceeds his available exemption limitations but rather the amount by which he is in excess of the same. The debtors have listed the value of the boat and attachments at \$2,000.00.
6. Under Bankruptcy Rule 4003, an objecting party has the burden of proof concerning its objection to an exemption claim. The trustee has offered no evidence of value vis-a-vis the boat and its attachments that countervails the value asserted by the debtors. Given that the trustee alleges that he has insufficient information to determine the values of the debtors' assets and given that the burden of proof regarding an objection to a claim of exemption rests with the objecting party, the trustee's objection, as it is presently construed, can not be sustained. The debtors, nonetheless, acknowledge that Scott Hank may be in excess of his available exemption limitations.
7. In any event, the debtors would elect to keep whatever items of property that they are able under their available exemption limitations. Were the Court to sustain the trustee's objection, notwithstanding the foregoing, the debtors would be perfunctorily relieved of all of the foregoing property as the trustee is requesting the Court to deny their exemption claim as to all of it and not just that portion in excess of the debtors' exemption limitations. The debtors submit that any such result would be highly inequitable.
8. If testimony is necessary at the foregoing hearing, the debtors and any parties called by the trustee may be called to testify as to the foregoing and as to any facts necessary to augment and further explain the same. The debtors do not anticipate any significant disagreements necessitating such hearing or testimony, however.

WHEREFORE, the debtors respectfully request the Court not only to overrule the trustee's objection in its entirety but also to grant any further relief it deems appropriate and equitable in the premises.

Dated: this 18TH day of May, 2004.

ESKENS, GIBSON & BEHM LAW FIRM, CHTD.

/s/ Stephen J. Behm
Stephen J. Behm, #263758
Attorney for Debtors
115 East Hickory Street, Suite 200
P.O. Box 1056
Mankato, MN 56002-1056
Telephone: (507) 345-5500

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**UNSWORN CERTIFICATE
OF SERVICE**

DEBTOR(S).

I, Stephen J. Behm, attorney with Eskens, Gibson & Behm Law Firm, Chtd., 115 East Hickory Street, Suite 200, P.O. Box 1056, Mankato, MN 56002-1056, declare that on May 18, 2004, I mailed copies of the attached **Response** by first class mail postage prepaid to each entity named below at the addresses stated below for each entity.

Paul W. Bucher, Chapter 7 Trustee, P.O. Box 549, Rochester, MN 55903.

U.S. Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

Scott and Bonnie Hank, 212 Second Street North, Le Sueur, MN 56058.

Dated: this 18th day of May, 2004.

ESKENS, GIBSON & BEHM LAW FIRM, CHTD.

/s/ Stephen J. Behm
Stephen J. Behm, #263758
Attorney for Debtor
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Mankato, MN 56002-1056
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